HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 96 OF 2007

-

Between:

K. Ramanaiah & others

.... Appellants

AND

The Mandal Revenue Officer,
Gooty Mandal, Anantapur District & another

.....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri M.Sudheer Kumar

Counsel for the respondents : Government Pleader for Revenue.

Dated: 01.02.2007

Per G.S.SINGHVI, CJ

The appellants have been compelled to seek intervention of the Division Bench by invoking Clause 15 of the Letters Patent because the writ petition filed by them for quashing order dated 03.08.2002 passed by Mandal Revenue Officer, Gooty Mandal, Anantapur District (respondent No.1) cancelling the assignment of lands in their/their predecessors' favour was summarily dismissed by the learned Single Judge on the ground of laches.

With the consent of learned counsel, we have heard the arguments and are finally disposing of the appeal.

A perusal of the record shows that the fathers of appellant Nos.1 to 3 and 5, the husband of appellant No.4 and appellant No.6 were assigned lands in Chetnepalli Village, Gooty Mandal, Anantapur District in the year 1961 and pattas were issued in their favour. The details of the assignments are as under:

S.No.	Patta No.	Sy.No.	Extent	Name
1.	D.R.Dis. 41/70	122C1/B	Ac.5.06 gts.	K. Subbaiah
2.	D.R.Dis.35/70	122C1/A	Ac.5.04 gts.	K. Ramaiah
3.	D.R.Dis.36/70	122C1/C	Ac.5.03 gts.	P. Subbarayudu
4.	D.R.Dis.38/70	122C1/D	Ac.5.04 gts.	K. Ramaiah
5.	D.R.Dis.42/70	122C1/G	Ac.5.04 gts	J. Rangaiah
6.	D.R.Dis.39/70	122C1/1	Ac.5.0 gts.	S. Ramanaiah

During their lifetime, the assignees brought the assigned lands under cultivation. After the death of the assignees (except appellant No.6), their heirs (appellant Nos.1 to 5 herein) have been cultivating the land. Appellant No.6 also developed the land and has been cultivating the same. In the year 2002, the appellants filed Writ Petition No. 14891 of 2002 with the complaint that respondent No.1 was seeking to dispossess them without any notice and opportunity of hearing. The same was disposed of by the learned Singe Judge on 16.08.2002 with the direction that the respondents shall not

dispossess the appellants without following the procedure established by law and without issuing notice to them.

After four years, the appellants filed Writ Petition No.9426 of 2006 with the prayer that order dated 03.08.2002 passed by respondent No.1 cancelling the assignment of lands be quashed because the same was not preceded by an enquiry and no opportunity of hearing was given to them. In paragraph 5 of the affidavit filed by appellant No.1 – K. Ramanaiah, S/o late K. Subbaiah, it was specifically averred that order dated 03.08.2002 was passed by respondent No.1 without giving notice and opportunity of hearing to the affected persons. It was also pleaded that the so-called enquiry was made by Mandal Revenue Inspector Grade-II at their back and they were not served with the copy of inspection report as also the final order.

The learned Single Judge did not issue formal notice to the respondents requiring them to file counter-affidavit to admit or deny the averments contained in the affidavit of appellant No.1 and disposed of the writ petition at the threshold by declaring that the writ petitioners are guilty of laches because they have moved the Court after long time gap of four years.

Shri M.Sudheer Kumar, learned counsel for the appellants argued that his clients could not have been non-suited on the ground of delay in filing the writ petition because copy of order dated 03.08.2002 passed by respondent No.1 had not been served on either of them. Learned counsel submitted that the appellants came to know about the order impugned in the writ petition in the year 2006 when respondent No.1 tried to dispossess them on the premise that the assignment of lands made in their favour had been cancelled. Thereafter, the appellants obtained copy of the order from the office of respondent No.1 and sought intervention of the Court.

Learned Assistant Government Pleader for Revenue tried to justify summary dismissal of the writ petition by reiterating the

assertion made before the learned Single Judge that order dated 3-8-2002 was passed by respondent No.1 after issuing public notice in the light of the report submitted by Mandal Revenue Inspector Grade–II, who found that the land had been kept vacant and had not been cultivated for long time. However, when we asked him to show whether enquiry was made by Mandal Revenue Inspector Grade-I, Gooty after informing the appellants and whether any notice was given to them proposing cancellation of the assignment and such notice had been served on them, the learned Assistant Government Pleader fairly conceded that the record available before him does not contain any document to show that enquiry was held by Mandal Revenue Inspector Grade-I, Gooty after giving notice to the appellants or that respondent No.1 issued notice to the individual appellants requiring them to show cause against the proposed cancellation of the assignment on the ground of violation of the conditions of assignment. He, however, argued that the relief should be denied to the appellants because they failed to avail the statutory remedy of appeal.

We have given serious thought to the entire matter and are convinced that the reason assigned by the learned Single Judge for non-suiting the appellants is legally untenable and the order under challenge is liable to be set aside. We are also convinced that the order dated 03.08.2002 passed by respondent No.1 cancelling the assignment of land made in favour of the predecessors of appellant Nos. 1 to 5 and appellant No.6 is nullity and the same is liable to be quashed on the ground of violation of the basics of natural justice.

The width and amplitude of the power vested in the High Court under Article 226 of the Constitution of India to issue directions, orders or writs including writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto was aptly described by the Supreme Court in **Dwaraka Nath v. ITO**[1] in the following words:

> "Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach

injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art. 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Court can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

The language of Article 226 does not show that the High Court's power to issue directions, orders or writs is hedged with any condition or limitation, but during last 56 years, the superior courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain belated claims. In **State of Madhya Pradesh v. Bhailal Bhai**[2], the Constitution Bench of the Supreme Court considered the issue of delay in filing petitions under Article 226 of the Constitution and laid down the following propositions:

"1) If there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to

issue the writ of mandamus for such payment. In both these kinds of cases if will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.

2) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

The same view was reiterated by another Constitution Bench in **Tilokchand v. H.B. Munshi**[3]. Speaking for the majority of the Court, Hidayathullah, CJ, observed:

"If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must more the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Art. 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental

Right and the remedy claimed are and how the delay arose."

The proposition laid down in the second judgment was approved by the majority of nine-judge Bench in **Mafatlal Industries Ltd. v. Union of India**[4]**.**

In **R.S. Deodhar v. State of Maharastra**[5], the Supreme Court held that if the petitioner is able to make out a case on merits, he cannot be non-suited on the jejune grounds of delay and laches or the like, provided that the result of the writ petition is not likely to affect third party rights. The propositions laid down in that judgment are as under:

> " 1) The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.
>
> 2) It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

If the ratio of the above-noted decisions is applied to the facts of this case, we do not have the slightest hesitation to hold that the appellants are not guilty of laches and the learned Single Judge committed a serious error by summarily dismissing the writ petition on the ground of laches. Although it may appear repetitive, we consider it necessary to observe that in the affidavit filed by him, appellant No.1 – K. Ramanaiah had categorically averred that order dated 03.08.2002 was passed by respondent No.1 without issuing notice to the writ

petitioners to show cause and without giving them opportunity of hearing against the proposed cancellation of assignment and that they had not been served with the order passed by respondent No.1. These averments were not been controverted by the respondents by filing a counter. Even before the Division Bench, no material has been produced to show that order dated 03.08.2002 was duly served on any of the appellants. Rather, the learned Assistant Government Pleader conceded that the notice containing the proposal for cancellation of the assignment was not issued to any of the appellants. If all this is considered in conjunction with the assertion of appellant No.1 that copy of order had not been served on the appellants and they came to know about the same when second attempt was made by respondent No.1 to dispossess them, it is impossible to record a finding/conclusion that the appellants are guilty of laches. Unfortunately, the learned Single Judge overlooked this crucial aspect of the case and summarily dismissed the writ petition with a cryptic observation that the petitioners are guilty of laches.

On the merits of the appellants' challenge to order dated 03.08.2002, we find that the same is vitiated due to patent violation of the rule of hearing i.e. audi alteram partem. Undisputedly, none of the appellants was given action-oriented notice with an indication that it is proposed to cancel the assignments made in the year 1961 on the ground of violation of the conditions thereof and, on that account, none of them got opportunity to produce evidence to show that the assigned lands had, in fact, been cultivated by their predecessors and by them. Therefore, it must be held that order dated 3-8-2002 is vitiated due to violation of the rules of natural justice and the said violation has resulted in failure of justice.

It is settled law that every quasi-judicial authority and even administrative authority entrusted with the task of deciding lis between the parties or passing an order, which affects the rights or interests of any person, must comply with the rules of natural justice. In **State of**

Orissa v. Dr. (Miss) Binapani Dei[6], the Supreme Court considered whether the rules of natural justice are applicable to purely administrative actions and answered the same in affirmative. The propositions laid down in that judgment read as under:

> " 1) An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.
>
> 2) It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

The same rule has been reiterated in **A.K. Kraipak v. Union of**

India[7], **S.L. Kapoor v. Jagmohan**[8], **Swadeshi Cotton Mills Co. Ltd. v. Union of India**[9], **Maneka Gandhi v. Union of India**[10] and **Olga Tellis v. Bombay Municipal Corporation**[11].

The argument of the learned Assistant Government Pleader that the appellants should be denied relief under Article 226 of the Constitution of India because they have failed to avail the alternative remedy of appeal sounds attractive, but lacks merit. The rule that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the aggrieved person is one of the rules of self-imposed restraint. In **Baburam v. Zilla Parishad**[12], the Supreme Court described the rule of alternative remedy in the following words:

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[13], the Supreme Court stated the rule of alternative remedy in the following words:

" Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226.

In **Champa Lal v. I.T. Commissioner**[14], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[15], **C.I.T. v. Ramendra Nath Ghosh**[16], **Swadeshi Cotton Mills Co. Ltd., v. Union of India** (supra), **Gujarat University v. N.U. Rajguru**[17], **State of H.P. v. Raja Mahendra Pal**[18], **L.L. Sudhakar Reddy v. State of A.P.**[19], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[20], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[21], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[22] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In our opinion, the case of the appellants falls within the ambit of the exceptions carved out by the Supreme Court in **Baburam v. Zilla Parishad** and **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra) and, therefore, they cannot be denied the relief on the ground of not availing the alternative remedy of appeal.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition filed by the appellants is also allowed and order dated 03.08.2002 passed by respondent No.1 is quashed. We would have saddled the respondents with exemplary costs, but refrain from doing so because the writ petition was dismissed by the learned Single Judge at the threshold without going into the merits of the issue raised by the appellants.

As a sequel to disposal of the appeal, W.A.M.P.No.158 of 2007 filed by he appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

01.02.2007

ksld

---

[1] AIR 1966 SC 81
[2] AIR 1964 SC 1006
[3] AIR 1970 SC 898
[4] JT 1996 (11) SC 283
[5] AIR 1974 SC 259
[6] AIR 1967 SC 1269
[7] AIR 1970 SC 150
[8] AIR 1981 SC 136
[9] AIR 1981 SC 818 = (1981) 1 SCC 664
[10] AIR 1978 SC 597
[11] AIR 1986 SC 180
[12] AIR 1969 SC 556
[13] (1983) 2 SCC 433
[14] AIR 1970 SC 645
[15] AIR 1970 SC 1980
[16] (1972) 4 SCC 379
[17] AIR 1988 SC 66
[18] (1999) 4 SCC 43
[19] (2001) 6 SCC 634
[20] (2002) 1 SCC 216
[21] (2003) 2 SCC 107
[22] (2004) 3 SCC 553